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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RONALD HAYEK, DANIEL WALKER, SUE WALKER, and JOHN BIDART, on behalf of themselves and all others similarly situated,	Civil Action No.: 10-5174(DRD)(MAS)
Plaintiffs,	**INDIRECT PURCHASERS' CONSOLIDATED, AMENDED CLASS ACTION COMPLAINT**
v.	
PREMIER CHEMICALS, LLC; SUMITOMO CORPORATION OF AMERICA; and YAS, INC.,	**JURY TRIAL DEMANDED**
Defendants.	

NATURE OF THE CASE

1. Plaintiffs RONALD HAYEK, DANIEL WALKER, SUE WALKER, and JOHN BIDART ("Plaintiffs" or "Indirect Purchaser Plaintiffs") bring this lawsuit as a class action on behalf of all individuals and entities in the United States that purchased products containing

caustic-calcined magnesium oxide and/or dead-burned magnesium oxide,[1] which was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators, from at least January 2002 through the present (the "Class Period"). Plaintiffs allege that during the Class Period, Defendants PREMIER CHEMICALS, LLC ("Premier"), SUMITOMO CORPORATION OF AMERICA ("Sumitomo"), and YAS, INC. ("YAS"), among others, conspired to fix, raise, maintain, and stabilize prices for MgO sold in the U.S. As a result of Defendants' unlawful conduct, Indirect Purchaser Plaintiffs and the class members paid more for MgO Products than they would have absent Defendants' illegal conduct. Indirect Purchaser Plaintiffs, on behalf of themselves and all those similarly situated, seek injunctive relief under the federal antitrust laws and damages under the state antitrust and consumer protection laws.

JURISDICTION AND VENUE

2. Plaintiffs bring this action under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 16 of the Clayton Act, 15 U.S.C. § 26, to obtain injunctive relief against all Defendants.

3. Plaintiffs also bring this action pursuant to state antitrust, unfair competition and consumer protection laws to recover damages, restitution, disgorgement, costs of suit, including reasonable attorneys' fees, for the injuries that Plaintiffs and all others similarly situated sustained as a result of Defendants' violations of those laws.

4. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1337 over Plaintiffs' claims under Section 1 of the Sherman Act and Sections 4 and 16 of the Clayton Act. The Court has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367.

[1] Caustic-calcined magnesium oxide and/or dead-burned magnesium oxide will be collectively referred to herein as "MgO". Products containing MgO, such as animal feed and fertilizers, will be referred to herein as "MgO Products".

Plaintiffs' state law claims are so related to his claims under Section 1 of the Sherman Act and Sections 4 and 16 of the Clayton Act that they form part of the same case or controversy.

5. This Court also has subject matter jurisdiction over the state law claims pursuant to the Class Action Fairness Act of 2005, which amended 28 U.S.C. § 1332 to add a new subsection (d) conferring federal jurisdiction over class actions where, as here, "any member of a class of Plaintiffs is a citizen of a state different from any Defendant and the aggregated amount in controversy exceeds $5,000,000, exclusive of interest and costs." This Court also has jurisdiction under 28 U.S.C. § 1332(d) because "one or more members of the class is a citizen of a state within the United States and one or more of the Defendants is a citizen or subject of a foreign state."

6. This court has jurisdiction over each Defendant named in this action under Section 12 of the Clayton Act, 15 U.S.C. § 22. Each Defendant conducts substantial business in the state of New Jersey, and at least one Defendant maintains its headquarters in this District. In addition, Defendants all purposefully availed themselves of the laws of the United States and New Jersey insofar as they manufactured MgO Products for sale in the United States and New Jersey.

7. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. § 1391, because each Defendant is either an alien corporation, transacts business in this District, or is otherwise found within this District. In addition, venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to this claim occurred in this District.

PARTIES

8. Plaintiff Daniel Walker resides at 28204 210th Street, Glidden, Iowa. While residing in Iowa, Plaintiff Daniel Walker indirectly purchased an MgO Product for his own use and not

for resale during the period January 1, 2002 to the present ("Class Period"). Plaintiff Daniel Walker suffered injury as a result of Defendants' conduct alleged herein.

9. Plaintiff Sue Walker resides at 1198 Forest Ave., Scranton, Iowa. While residing in Iowa, Plaintiff Sue Walker indirectly purchased an MgO Product for her own use and not for resale during the Class Period. Plaintiff Sue Walker suffered injury as a result of Defendants' conduct alleged herein.

10. Plaintiff Ronald Hayek resides at 2883 160th Street, Fort Atkinson, Iowa. While residing in Iowa, Plaintiff Ronald Hayek indirectly purchased an MgO Product for his own use and not for resale during the Class Period. Plaintiff Ronald Hayek suffered injury as a result of Defendants' conduct alleged herein.

11. Plaintiff John Bidart resides at 20400 Old River Road, Bakersfield, California. While residing in California, Plaintiff John Bidart indirectly purchased an MgO Product for his own use and not for resale during Class Period. Plaintiff John Bidart suffered injury as a result of Defendants' conduct alleged herein.

12. Defendant Premier Chemicals, LLC is a Delaware corporation with its principal place of business in Conshohocken, Pennsylvania. During the Class Period, Premier mined, manufactured, distributed, and sold MgO in the U.S.

13. Defendant Sumitomo Corporation of America is a New York corporation with its principal place of business in New York, New York. During the Class Period, Sumitomo distributed and sold MgO in the U.S.

14. Defendant YAS, Inc. maintains its principal place of business in Franklin Lakes, New Jersey. During the Class Period, YAS facilitated Sumitomo's sourcing of MgO from China for distribution and sale in the U.S.

CO-CONSPIRATORS

15. Various other persons, firms or corporations not yet named as Defendants in this lawsuit participated as co-conspirators with Defendants in the offenses alleged and performed acts and made statements to advance these offenses.

CLASS-ACTION ALLEGATIONS

16. Plaintiffs bring this action on their own behalf and on behalf of a class of persons pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2). The Injunctive Relief Class is defined as follows:

> All persons and entities residing in the United States who indirectly purchased, for their own use and not for resale, an MgO Product that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators between January 1, 2002 and the present.

17. Excluded from the Injunctive Relief Class are Defendants; the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. Also excluded are any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

18. Pursuant to Fed. R. Civ. P. 23(a) and (b)(3), Plaintiffs will also seek certification of the following subclasses (collectively, the "State Classes") for damages for claims under the antitrust statutes and/or consumer protection statutes of each of the following jurisdictions:

a. **Arizona Indirect Purchaser Class**: All persons and entities who, as residents of Arizona, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

b. **California Indirect Purchaser Class**: All persons and entities who, as residents of California, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

c. **District of Columbia Indirect Purchaser Class**: All persons and entities who, as residents of the District of Columbia, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

d. **Florida Indirect Purchaser Class**: All persons and entities who, as residents of Florida, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

e. **Hawaii Indirect Purchaser Class**: All persons and entities who, as residents of Hawaii, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

f. **Illinois Indirect Purchaser Class**: All persons and entities who, as residents of Illinois, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

g. **Iowa Indirect Purchaser Class**: All persons and entities who, as residents of Iowa, indirectly purchased an MgO Product during the Class

Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

h. **Kansas Indirect Purchaser Class**: All persons and entities who, as residents of Kansas, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

i. **Maine Indirect Purchaser Class**: All persons and entities who, as residents of Maine, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

j. **Massachusetts Indirect Purchaser Class**: All persons and entities who, as residents of Massachusetts, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

k. **Michigan Indirect Purchaser Class**: All persons and entities who, as residents of Michigan, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

l. **Minnesota Indirect Purchaser Class**: All persons and entities who, as residents of Minnesota, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

m. **Mississippi Indirect Purchaser Class**: All persons and entities who, as residents of Mississippi, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

n. **Montana Indirect Purchaser Class**: All persons and entities who, as residents of Montana, indirectly purchased an MgO Product during the Class Period for their own use and not for that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

o. **Nebraska Indirect Purchaser Class**: All persons and entities who, as residents of Nebraska, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

p. **Nevada Indirect Purchaser Class**: All persons and entities who, as residents of Nevada, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

q. **New Hampshire Indirect Purchaser Class**: All persons and entities who, as residents of New Hampshire, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

r. **New Mexico Indirect Purchaser Class**: All persons and entities who, as residents of New Mexico, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

s. **New York Indirect Purchaser Class**: All persons and entities who, as residents of New York, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

t. **North Carolina Indirect Purchaser Class**: All persons and entities who, as residents of North Carolina, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

u. **North Dakota Indirect Purchaser Class**: All persons and entities who, as residents of North Dakota, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

v. **Oregon Indirect Purchaser Class**: All persons and entities who, as residents of Oregon, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

w. **South Carolina Indirect Purchaser Class**: All persons and entities who, as residents of South Carolina, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

x. **South Dakota Indirect Purchaser Class**: All persons and entities who, as residents of South Dakota, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

y. **Tennessee Indirect Purchaser Class**: All persons and entities who, as residents of Tennessee, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

z. **Utah Indirect Purchaser Class**: All persons and entities who, as residents of Utah, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

aa. **Vermont Indirect Purchaser Class**: All persons and entities who, as residents of Vermont, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

bb. **West Virginia Indirect Purchaser Class**: All persons and entities who, as residents of West Virginia, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

cc. **Wisconsin Indirect Purchaser Class**: All persons and entities who, as residents of Wisconsin, indirectly purchased an MgO Product during the Class Period for their own use and not for resale that was manufactured, distributed or sold by one or more Defendants, their predecessors, subsidiaries, or co-conspirators.

19. Excluded from the State Classes are Defendants; the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assignee of any Defendant. Also excluded are any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

20. The persons in the Injunctive Relief Class ("Class") and State Classes are so numerous that individual joinder of all members is impracticable under the circumstances of this case. Although the precise number of such persons is unknown, the exact size of the Class and State Classes is easily ascertainable, as each class member can by identified by using Defendants' records and/or the records of its distributors or retailers. Plaintiffs are informed and believe that there are many thousands of Class and State Class members.

21. Common questions of law or fact predominate among the class members, including but not limited to:

a. whether Defendants conspired to fix, raise, maintain, or stabilize the prices of MgO sold in the U.S.;

b. whether Defendants conspired to allocate markets for MgO sold in the U.S.;

c. whether Defendants' conduct caused injury to Plaintiffs and the class members' business or property;

d. whether injunctive relief should be entered for the Injunctive Relief Class;

e. the appropriate class-wide measure of damages for the State Classes; and

f. whether Defendants took steps actively to conceal their conspiracy.

22. These and other questions of law or fact predominate over any questions affecting only individual class members.

23. Plaintiffs' claims are typical of the class members' claims in that they are indirect purchasers of MgO; their purchases during the Class Period were typical of purchases by other class members; and the relief they seek—money damages under state law and injunctive relief under federal law—are common to the class. In other words, the alleged conspiracy affected plaintiffs the same as it affected the class members.

24. Plaintiffs will fairly and adequately protect the class members' interests in that plaintiffs are typical purchasers of MgO; have no conflict with any other members of the class; and are represented by experienced and able antitrust class-action counsel. Plaintiffs' interests are also coincident with, and not antagonistic to, the class members' interests.

25. Class-action treatment is superior to any alternative for the fair and efficient adjudication of this case because it allows a large number of injured parties to prosecute their common claims in a single forum without duplicating evidence and effort. Class treatment also permits the adjudication of claims by smaller class members who could not afford to litigate individually an antitrust claim against large corporate Defendants.

26. Class certification is appropriate under Rule 23(b)(2) because Defendants have acted on grounds generally applicable to the respective class members, thereby making appropriate final injunctive relief with respect to class members as a whole.

TRADE AND COMMERCE

27. Defendants mine, manufacture, distribute, and/or sell MgO either independently, as a subsidiary, or as part of a joint venture. MgO manufactured, distributed, and/or sold by one defendant is fungible, as it is comparable to and interchangeable with MgO manufactured, distributed, and/or sold by the other Defendants.

28. During the Class Period, Defendants sold MgO in a continuous and uninterrupted flow of interstate commerce to customers located in states other than the states in which Defendants mined or otherwise originally acquired MgO. Thus, Defendants' business activities with respect to MgO were within the flow of, and were substantially affected by, interstate trade and commerce.

FACTS

MgO

29. MgO is a solid, white, naturally occurring mineral. It is formed by an ionic bond between one magnesium atom and one oxygen atom.

30. MgO is used in a wide variety of industrial applications, including, among other things, the production of refractory products, animal feeds, fertilizers, pharmaceuticals, food products, electrical insulation, and flame-retardant materials.

31. MgO can be mined from magnesite, or it can be processed from seawater or subterranean brines containing magnesium chloride. The two most common forms of MgO are caustic-calcined magnesia and dead-burned magnesia. Caustic-calcined magnesia (Caustic MgO) is manufactured at lower temperatures than dead-burned magnesia and is used in products like animal feeds and fertilizers that don't require the reduced reactivity offered by dead-burned magnesia. Dead-burned magnesia is most often used in refractory applications.

32. The MgO industry has a number of structural and other characteristics that facilitate the implementation and maintenance of a horizontal price-fixing conspiracy and demonstrate that all MgO purchasers were impacted by the conspiracy. These characteristics include:

a. MgO is a commodity product that is fungible in the sense that MgO manufactured by any defendant is readily substitutable with MgO manufactured by any other defendant. MgO is a highly homogenous product sold by Defendants and purchased by plaintiffs and members of the class primarily on the basis of price. It is easier to form and sustain a cartel when the product in question is a commodity because it is easier to agree on prices and to monitor those prices once an agreement is formed.

b. Defendants sold or had the ability to sell MgO of comparable type and quality throughout the U.S. in overlapping geographic markets.

c. The MgO industry in the U.S. is highly concentrated, which facilitates coordination of MgO prices among Defendants. During the Class Period, Defendants had market power over the sale of MgO in the U.S.

d. There are substantial barriers to entry in the MgO industry. Entry into the industry requires a substantial sunk investment and a significant period of time. The minimum viable scale of a new MgO production facility is very large and extremely costly. Similarly, viable entry requires that the new producer capture a significant market share from existing producers. Thus, entry is both expensive and risky.

e. The demand for MgO is inelastic.

The MgO Market

33. In 2000, Premier controlled the majority of domestically-consumed Caustic and Dead-Burned MgO. In 2000, domestic production contributed to approximately 50% of the total U.S. consumption of Caustic MgO and a lesser amount of Dead-Burned MgO. The majority of the remaining MgO was imported from China, which Premier purchased for resale to its U.S. customers.

34. Sumitomo similarly imported MgO from China but only resold Dead-Burned MgO from China to its U.S. customers. Premier and Sumitomo also sourced magnesite from China for manufacture into Dead-Burned MgO for sale in the U.S.

35. YAS facilitated Sumitomo's purchases of Chinese magnesite due to YAS's relationships with the Chinese magnesite mines.

36. Preceding the Class Period, Premier's share of the MgO markets shrank due to increased Chinese competition.

37. For instance, while the U.S. was a net exporter with respect to Dead-Burned MgO in the 1980s, cheaper imports, mainly from China, have since replaced some of the U.S. domestic production. This shift notably affected Premier. As a result, during the Class Period, Premier and Sumitomo bought virtually all the Chinese Dead-Burned MgO available for purchase and resold it to their U.S. customers.

38. During the Class Period, with some limited exceptions, the MgO markets were considered to be fairly saturated, with limited potential for growth.

The MgO Price-Fixing Conspiracy

39. The MgO conspiracy began as early as January 2002. Instead of competing, representatives from Premier, Sumitomo, and YAS met regularly to discuss fixing U.S. MgO prices and allocating U.S. MgO markets.

40. Sumitomo, facilitated by YAS, imported MgO from China into the U.S. Sumitomo was able to do so because Hideo Sumikawa, who is now YAS's president, used to work for Sumitomo, and Sumikawa had relationships with various Chinese magnesite mines. YAS's relationships with these Chinese mines allowed Sumitomo to make MgO purchases from these mines for resale in the U.S.

41. In particular, YAS, through Sumikawa, facilitated MgO purchases from Chinese mines for Sumitomo, through Coy Akiyama, who was head of Sumitomo's inorganic chemicals unit. Sumitomo and YAS thus participated together in the U.S. MgO market.

42. Premier was also active in the U.S. MgO market. During the Class Period, Premier's former president, Cary W. Ahl, Sr., regularly called Sumikawa at YAS to discuss fixing Premier's and Sumitomo's Dead-Burned MgO prices and allocating their respective MgO accounts in the U.S. While Ahl manipulated MgO prices and markets for Premier, Terry Wakisama implemented this price-fixing and market-allocation scheme for Sumitomo. Ahl's successors at Premier have continued this conspiracy.

43. In 2004, Sumitomo was looking for ways to increase the amount of MgO it was transporting from its New Orleans facility. Specifically, it wanted to move Caustic MgO by barge from New Orleans to Tulsa and to move Dead-Burned MgO by barge on the Ohio River to steel factories in Ohio and Pennsylvania.

44. Dead-Burned MgO shipments utilized only about 50% of Sumitomo's New Orleans barge's 17,000-metric-ton capacity. Tulsa was the only port that could accommodate this barge, and Sumitomo had access to a very large storage facility in Tulsa.

45. While Premier and Sumitomo were regularly communicating about fixing Dead-Burned MgO prices and allocating Dead-Burned MgO customers in 2004, Sumitomo also wanted to enter the Caustic MgO market, which would allow it to utilize its barge capacity fully.

46. However, Premier controlled the Caustic MgO market, and Sumitomo did not want to upset Sumitomo's Dead-Burned MgO price-fixing and market-allocation arrangement with Premier.

47. In order to facilitate Sumitomo's entry into the Caustic MgO market, a meeting was arranged in the summer of 2004 for the purpose of discussing how Sumitomo could quietly enter the Caustic MgO market without upsetting Ahl at Premier. The meeting was attended by Akiyama on behalf of Sumitomo, Sumikawa on behalf of YAS, and Gary Vannorsdel, who was an animal-nutrition broker who had a relationship with Premier. Also in attendance was Vannorsdel's son. The meeting took place at a Tulsa, Oklahoma Holiday Inn.

48. At this meeting, Akiyama described Sumitomo's frustration with shipping Sumitomo's price-fixed Dead-Burned MgO on partially empty barges. Akiyama explained that Sumitomo wanted to maximize efficiencies by filling its barges with Caustic MgO for sale to the western U.S. But Akiyama explained that, to avoid Premier's detection, Sumitomo and YAS needed to enter the Caustic MgO market discreetly. Otherwise, if Premier were to discover that Sumitomo was competing with Premier on Caustic MgO, Premier would likely retaliate against Sumitomo.

49. In the course of discussing a strategy for Sumitomo to enter the U.S. Caustic MgO market, Akiyama (Sumitomo) recounted to Sumikawa (YAS) multiple discussions between him and Ahl (Premier) where Ahl had called Akiyama to: (i) set Dead-Burned MgO prices, (ii) allocate Dead-Burned MgO markets, and (iii) ensure that Sumitomo was maintaining its agreement with Premier to fix Dead-Burned MgO prices.

50. During the course of the conversation, Vannorsdel expressed concern about compromising his relationship with Premier if he were to help facilitate Sumitomo and YAS's involvement in Caustic MgO. In response, Akiyama from Sumitomo told him, "Don't be concerned because we [Sumitomo] talk with Premier on a daily basis to set prices and to discuss what accounts they can have."

51. Shortly after this meeting, Ahl from Premier discovered Sumitomo's and YAS's plan to enter the Caustic MgO market. In retaliation, Premier dropped Dead-Burned MgO prices to signal to Sumitomo and YAS that Premier not only controlled the Dead-Burned MgO market but would exert this same control over the Caustic MgO market were Sumitomo to enter it.

52. Following Premier's actions, Sumitomo did not enter the Caustic MgO market. Rather, Sumitomo and YAS illegally agreed with Premier to remain out of the Caustic MgO market, despite the fact that Sumitomo, as a rational profit-seeking entity, was motivated to enter the Caustic MgO market. Thus, Defendants agreed to allow Premier to maintain its control over Caustic MgO pricing.

EFFECT/DAMAGES

53. Defendants' conspiracy to raise, fix, or maintain the price of MgO at artificial levels resulted in harm to Plaintiffs and the proposed classes because it resulted in them paying higher prices for MgO Products than they would have in the absence of Defendants' conspiracy. On information and belief, the entire overcharge for the MgO at issue was passed on to Plaintiffs and members of proposed classes.

54. As a direct and proximate result of Defendants' and their co-conspirators unlawful contract, combination, and conspiracy, Plaintiffs and the Class members were injured and financially damaged in their business and property by having paid more for MgO Products than they would have absent Defendants' and their co-conspirators' unlawful activities. The total amount of damages is presently undetermined.

FRAUDULENT CONCEALMENT

55. Defendants engaged in a successful, illegal price-fixing conspiracy which, by its very nature, was inherently self-concealing.

56. As a result, until recently neither Plaintiffs nor the class members had knowledge of any of the foregoing violations, and neither Plaintiffs nor the class members, until recently, could have discovered through reasonable diligence that Defendants and their co-conspirators had engaged in the foregoing violations, since Defendants and their co-conspirators actively and fraudulently concealed these violations to obscure their illegal activity.

57. For example, as set forth above, Defendants met secretly and among themselves for the express purpose of fixing prices and allocating markets of domestically-sold MgO.

58. During the Class Period, price increases for MgO were justified by references to tight supply, thinning margins, and increased energy and freight costs. Defendants used these rationales to explain price increases instead of disclosing that such increases were the intended result of a conspiracy to fix prices and allocate markets.

59. Defendants and their co-conspirators concealed and carried out their illegal conduct in a manner that was designed to and did preclude detection.

60. Defendants and their co-conspirators' fraudulent concealment tolled the statute of limitations applicable to plaintiffs and the class members' claim.

COUNT I
Violation of the Sherman Act, 15 U,S.C. §1

61. Plaintiffs incorporate by reference all the above allegations as if fully set forth herein.

62. Beginning as early as January 2002 and continuing through the present, the exact date being unknown to Plaintiffs and exclusively within the knowledge of Defendants, Defendants and their co-conspirators entered into a continuing contract, combination or conspiracy to unreasonably restrain trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1) by artificially reducing or eliminating competition in the United States.

63. In particular, Defendants have combined and conspired to raise, fix, maintain or stabilize the prices of MgO sold in the United States.

64. As a result of Defendants' unlawful conduct, prices for MgO and MgO Products were raised, fixed, maintained, and stabilized in the United States.

65. The contract, combination or conspiracy among Defendants consisted of a continuing agreement, understanding, and concerted action among Defendants and their co-conspirators.

66. For purposes of formulating and effectuating their contract, combination, or conspiracy, Defendants and their co-conspirators did those things they contracted, combined, or conspired to do, including:

a. exchanged information on prices charged for MgO sold domestically;

b. agreed to raise, fix, and maintain prices for MgO sold domestically;

c. raised, fixed, and maintained prices for MgO sold domestically;

d. allocated markets for MgO; and

e. sold MgO throughout the U.S. at non-competitive prices.

67. As a result of Defendants' unlawful conduct, Plaintiffs and the other members of the Class have been injured in their businesses and property in that they have paid more for MgO Products than they otherwise would have paid in the absence of Defendants' unlawful conduct.

68. These violations are continuing and will continue unless enjoined by this Court.

69. Pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, Plaintiffs and the Class seek the issuance of an injunction against Defendants, preventing and restraining the violations alleged herein.

COUNT II

(Violations of State Antitrust and Restraint of Trade Laws)

70. Plaintiffs incorporate by reference the allegations in the above paragraphs as if fully set forth herein.

71. Plaintiffs allege the following violations of state antitrust and restraint of trade laws in the alternative. By reason of the foregoing, Defendants have violated:

a. Arizona Revised Statutes, §§ 44-1401, *et seq*.

b. California Business and Professions Code, §§ 16700, *et seq*.

c. District of Columbia Code Annotated §§ 28-4501, *et seq*.

d. Hawaii Revised Statutes, §§ 480-1, *et seq*.

e. Illinois Antitrust Act, Illinois Compiled Statutes, §§ 740 Ill. Comp. Stat. 10/1, *et seq*.

f. Iowa Code §§ 553.1, *et seq*.

g. Kansas Statutes, §§ 50-101, *et seq*.

h. Maine Revised Statutes, 10 M.R.S. §§ 1101, *et seq*.

i. Michigan Compiled Laws §§ 445.773, *et seq*.

j. Minnesota Statutes §§ 325D.49, *et seq*.

k. Mississippi Code §§ 75-21-1, *et seq*.

l. Nebraska Revised Statutes §§ 59-801, *et seq*.

m. Nevada Revised Statutes §§ 598A.010, *et seq*.

n. New Hampshire Revised Statutes §§ 356:1, *et seq*.

o. New Mexico Statutes §§ 57-1-1, *et seq*.

p. New York General Business Laws §§ 340, *et seq*.

q. North Carolina General Statutes §§ 75-1, *et seq*.

r. North Dakota Century Code §§ 51-08.1-01, *et seq*.

s. Oregon Revised Statutes §§ 646.705, *et seq*.

t. South Dakota Codified Laws §§ 37-1-3.1, *et seq*.

u. Tennessee Code §§ 47-25-101, *et seq*.

v. Utah Code §§ 76-10-911, *et seq*.

w. Vermont Stat. Ann. 9 §§ 2453, *et seq*.

x. West Virginia Code §§ 47-18-1, *et seq*.

y. Wisconsin Statutes §§ 133.01, *et seq*.

72. Defendants' combinations or conspiracies had the following effects: (1) price competition for MgO and MgO Products was restrained, suppressed, and eliminated throughout the above states; (2) prices for MgO and MgO Products were raised, fixed, maintained and stabilized at artificially high levels throughout the states; (3) Plaintiffs and the members of the classes were deprived of free and open competition; and (4) Plaintiffs and the members of the classes paid supra-competitive, artificially inflated prices for MgO Products.

73. During the Class Period, Defendants' illegal conduct had a substantial effect on commerce in the above states.

74. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and the classes have been injured in their business and property and are threatened with further injury.

75. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of the above statutes. Accordingly, Plaintiffs and the classes seek all relief available under the respective state statutes.

COUNT III
(VIOLATIONS OF STATE CONSUMER PROTECTION AND UNFAIR COMPETITION LAWS)

76. Plaintiffs incorporate by reference the allegations in the above paragraphs as if fully set forth herein.

77. Plaintiffs allege the following violations of state consumer protection and unfair competition laws in the alternative.

78. Defendants engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the state consumer protection and unfair competition statutes listed below. By reason of the foregoing, Defendants have violated:

a. California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq*.

b. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq*.

c. Hawaii Revised Statutes Annotated §§ 480-1, *et seq*.

d. Massachusetts Consumer and Business Protection Act, M.G.L. c. 93A, § 1, *et seq*.

e. Montana's Unfair Trade Practices and Consumer Protection Act of 1970, Mont. Code, §§ 30-14-103 *et seq*.

f. Nebraska's Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601, *et seq*.

g. New Hampshire's Consumer Protection Act, N.H. Rev. Stat. Ann. §§ 358-A:2, *et seq*.

h. New York's General Business Law, N.Y. Gen. Bus. Law § 349, *et seq*.

i. South Carolina's Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, *et seq*.

j. Vermont's Consumer Fraud Act, 9 Vt. Stat. Ann. § 2451, *et seq*.

79. Defendants agreed to, and did in fact, act in restraint of trade or commerce in a market that includes the above states, by affecting, fixing, controlling, and/or maintaining, at

artificial and noncompetitive levels, the prices at which MgO and MgO Products were sold, distributed, or obtained in those states.

80. Defendants deliberately failed to disclose material facts to Plaintiffs and the classes concerning Defendants' unlawful activities and artificially inflated prices for MgO and MgO Products. Defendants owed a duty to disclose such facts, and considering the relative lack of sophistication of the average consumer, Defendants breached that duty by their silence. Defendants misrepresented to all consumers during the Class Period that Defendants' MgO prices were competitive and fair.

81. Defendants' unlawful conduct had the following effects: (1) MgO price competition was restrained, suppressed, and eliminated throughout the states; (2) MgO prices were raised, fixed, maintained, and stabilized at artificially high levels throughout the states; (3) Plaintiffs and the classes were deprived of free and open competition; and (4) Plaintiffs and the classes paid supra-competitive, artificially inflated prices for MgO Products.

82. As a direct and proximate result of the Defendants' violations of law, Plaintiffs and the classes suffered an ascertainable loss of money or property as a result of Defendants' use or employment of unconscionable and deceptive commercial practices as set forth above. That loss was caused by Defendants' willful and deceptive conduct, as described herein.

83. Defendants' deception, including their affirmative misrepresentations and omissions concerning the price of MgO, likely misled all consumers acting reasonably under the circumstances to believe that they were purchasing MgO Products at prices born by a free and fair market. Defendants' misleading conduct and unconscionable activities constitutes unfair competition or unfair or deceptive acts or practices in violation of the above statutes, and, accordingly, Plaintiffs and the classes seek all relief available under the respective statutes

PRAYER FOR RELIEF

WHEREFORE, Indirect Purchaser Plaintiffs pray that the Court enter judgment on their behalf and on behalf of the Class herein, adjudging and decreeing that:

A. This action may proceed as a class action, with Plaintiffs as the designated Class Representatives and their counsel as Class Counsel;

B. Defendants have engaged in a contract, combination, and conspiracy in violation of Section 1 of the Sherman Act (15 U.S.C. § 1), and that Plaintiffs and the Injunctive and State Classes have been injured in their businesses and property as a result of Defendants' violations;

C. Plaintiffs and the members of the State Classes recover damages sustained by them, restitution or disgorgement, as provided by the state antitrust and consumer protection laws, and that a joint and several judgment in favor of Plaintiffs and the State Classes be entered against the Defendants in an amount to be trebled in accordance with such laws;

D. Defendants, their subsidiaries, affiliates, successors, transferees, assignees, and the respective officers, directors, partners, agents, and employees thereof and all other persons acting or claiming to act on their behalf be permanently enjoined and restrained from continuing and maintaining the combination, conspiracy, or agreement alleged herein;

E. Plaintiffs and the members of the State Classes be awarded pre-judgment and post-judgment interest, and that such interest be awarded at the highest legal rate from and after the date of service of the initial complaint in this action;

F. Plaintiffs and the members of the Class recover their costs of this suit, including reasonable attorneys' fees as provided by law; and

G. Plaintiffs and the members of the Class receive such other or further relief as may be just and proper.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury of all of the claims asserted in this complaint so triable.

Dated: December 31, 2010

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